SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 597

ROBERT J. McKNETT, PETITIONER,

vs.

ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

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[fols. a–1] [Caption omitted]

IN CIRCUIT COURT OF JEFFERSON COUNTY

ROBERT J. McKNETT, Plaintiff,

vs.

ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY, a Corporation, Defendant

[fol. 2] SUMMONS—Filed Jan. 20, 1932

THE STATE OF ALABAMA,
Jefferson County:

CIRCUIT COURT, TENTH JUDICIAL CIRCUIT OF ALABAMA

To Any Sheriff of the State of Ala[illegible], Greeting:

You are hereby commanded to summon St. Louis & San Francisco Railway Company, a corporation, to appear before Circuit Court, to be held for said County at the place of holding the same, within thirty days from service of this process, then and there to answer the complaint of Robert J. McKnett.

Witness my hand, this 20 day of January, 1932.

Geo. Whitfield, Clerk.

IN CIRCUIT COURT OF JEFFERSON COUNTY

COMPLAINT—Filed Jan. 20, 1932

Count One

The plaintiff claims of the defendant the sum of One Hundred Fifty Thousand and no/100 ($150,000.00) Dollars as damages for that heretofore on, to-wit, September 1st, 1931, the defendant was a body corporate and was a common carrier by railroad, and, as such common carrier, was engaged in interstate commerce by railroad in the City of Memphis, in the State of Tennessee, among other places, that is, the defendant at said time and place was engaged in transporting by a railroad commerce or freight originating in one State and consigned to and moving to another

and different State; and, on to-wit, the 1st day of September, 1931, the plaintiff was in the employment of the defendant as a yard conductor or foreman, and while acting within the line and scope of his employment by the defendant, and while engaged in such interstate commerce for the defendant in moving several cars of freight from the defendant's yards at or near Georgia Street, in Memphis, Tennessee, to the yards of the N. C. and St. L. located just [fol. 3] East of Main Street in Memphis, Tennessee, one or more of which cars contained commerce or freight originating in one State and destined to and consigned to another State, and while the plaintiff, then acting in the line and scope of his employment by the defendant, was in the act of disembarking from one of the said cars, which was then in motion, the defendant so negligently conducted its said business that as a proximate consequence thereof the plaintiff was hurt and injured as follows: The plaintiff fell from, to-wit, the top of one of the said cars to the track below while the said cars were in motion, the plaintiff's left hand was cut off, making necessary the amputation of the left arm just below the elbow, and the plaintiff was bruised and contused about his head and shoulders and chest and other parts of his body, and the plaintiff was shocked and his nervous system impaired, and the plaintiff was internally injured and was permanently injured, and he was caused to suffer great physical pain and mental anguish, and will in the future continue to suffer great physical pain and mental anguish, and the plaintiff was put to great expense for medicine, doctors' bills and hospital bills in and about the treating and curing and the effort to treat and cure, his said wounds and injuries, and he was caused to lose much time from his employment, and to lose the remuneration which he would have received therefrom, and he was permanently crippled and deformed, and rendered permanently less able to work and earn a livelihood for the balance of his life.

And the plaintiff avers that all of his said wounds and injuries and damages, hereinabove set forth, arose as the proximate result of the negligence of the defendant, which said negligence consisted in this, to-wit: The defendant, at the said time and at the said place and on the said occasion, while transporting freight by railroad in interstate commerce, so negligently conducted its said business as

to cause the plaintiff, as a proximate consequence of the said negligence, to fall from the top of a freight car to the ground and underneath the said freight car and to receive the said injuries and damages hereinabove set forth. Hence this suit.

And the plaintiff avers that on, to-wit, September the 1st, 1931, and, to-wit, on the date of the filing of this suit, the defendant was doing business in Jefferson County, Alabama.

London, Yancey & Brower, as Attorneys for the Plaintiff.

[fol. 4] NOTE.—The plaintiff demands a trial of this cause by a jury.

London, Yancey & Brower, as Attorneys for the Plaintiff.

Referred to Walter Brower.

SHERIFF'S RETURN

Executed this the 23 day of Jan. 1932, on St. Louis & San Francisco Railway Company, a corporation, by leaving a copy of within with A. Smith, Agent of said Company.

Jas. F. Hawkins, Sheriff, Jefferson Co., Ala. by J. W. Williams, D. S.

[File endorsement omitted.]

IN CIRCUIT COURT OF JEFFERSON COUNTY

PLEA IN ABATEMENT—Filed Feb. 9, 1932

Now comes the defendant in the above entitled cause and says that plaintiff ought not to have and maintain said action for that it affirmatively appears from the averments of plaintiff's complaint that the cause of action set out therein did not accrue or arise in the State of Alabama, but accrue or arise in the State of Tennessee, and that said cause of action did not arise either under the Common Law or by virtue of any statute of the State of Tennessee, but arose under or by virtue of an Act of the Congress of the United States commonly known as the Federal Employers' Liability Act.

Wherefore, defendant prays that this suit be abated and that defendant go hence without a day.

St. Louis-San Francisco Railway Company, by Cabaniss & Johnston, Its Attorneys.

[fol. 5] *Duly sworn to by M. G. Cooper. Jurat omitted in printing.*

IN CIRCUIT COURT OF JEFFERSON COUNTY

DEMURRER TO DEFENDANT'S PLEA IN ABATEMENT—Filed Jan. 16, 1933

Comes the plaintiff in the above styled cause and demurs to the defendant's plea in abatement and for grounds of said demurrer sets down and assigns, separately and severally, the following, to-wit:

1. For that the said plea does not in anywise constitute a defense to the plaintiff's complaint.

2. For that the facts set forth in the said plea do not as a matter of law present any legal basis wherein and whereby the Circuit Court of the Tenth Judicial Circuit of Alabama does not have jurisdiction of the cause of action.

3. For that the said plea does not present in its averments any facts which prevent the Court from having jurisdiction of the cause of action.

4. For that it affirmatively appears from the said plea that the cause of action which the plaintiff sues on arose under the laws of a state other than the State of Alabama.

[fol. 6] 5. For that it affirmatively appears from the said plea that the cause of action which the plaintiff sues upon is one in tort which accrued in another state other than the State of Alabama.

6. For that the said plea does not aver that the cause of action sued upon did not accrue or arise under the statutes of the State of Alabama and did not arise under the statutes of another state.

7. For that it affirmatively appears from the said plea that the cause of action is in tort and arises under the statutes of another state, within the meaning of the word

"State" as used in Section 5681 of the Code of Alabama of 1923.

8. For that it is not averred in the said plea that the Court does not have jurisdiction of the defendant.

9. For that no facts are set forth in the said plea showing that the Court does not have jurisdiction of the defendant.

10. For that the said plea does not in anywise controvert or answer the allegation in the complaint to the effect that on, to wit, September 1st, 1931, and on, to-wit, the date of the filing of this suit, the defendant was doing business in Jefferson County, Alabama.

11. For that from aught that appears to the contrary from the said plea the defendant owned and operated a railroad in the State of Alabama and in Jefferson County, Alabama, at the time of the accrual of the cause of action and at the time of the filing of this suit, and no denial thereof is made in the said plea.

12. For that no facts are averred in the said plea demonstrating or tending to show that this Court does not have jurisdiction of the defendant, and no facts are averred in the said plea demonstrating or showing that this Court would not have jurisdiction of a cause of action which accrued in the State of Tennessee arising out of the so-called Federal Employers' Liability Act.

13. For that it affirmatively appears from the said plea that every fact necessary to the jurisdiction of this Court of the said cause of action existed.

14. For that the said plea in legal effect confesses jurisdiction of this Court of the said cause of action.

15. For that the said plea in effect admits that the cause of action accrued in the State of Tennessee and arose as a [fol. 7] cause of action in tort under and by virtue of an act or statute of the United States commonly known as the Federal Employers' Liability Act, and the said plea does not deny that this Court has jurisdiction of the defendant.

16. For that it does not appear from the said plea that the defendant is a foreign corporation.

17. For that it does not appear that the plaintiff is a non-resident of the State of Alabama.

London, Yancey & Brower, Attorneys for the Plaintiff.

[File endorsement omitted.]

IN CIRCUIT COURT OF JEFFERSON COUNTY

JUDGMENT—Jan. 16, 1933

On this the 16th day of January, 1933, this cause being reached on the docket and called for trial, came the parties by their attorneys, and plaintiff demurs to the defendant's special plea entitled plea in abatement; and said demurrers to plea in abatement are by the Court heard and considered, whereupon,

It is ordered and adjudged by the Court that said demurrers be and they are hereby overruled; plaintiff, by reason of adverse rulings of the Court, takes a non-suit, and moves the Court for an order accordingly, whereupon,

It is ordered and adjudged by the Court that a non-suit be and the same is hereby entered in accordance with plaintiff's motion, and that the defendant go hence without day and have and recover of the plaintiff all costs herein accrued for which execution may issue.

Bond on appeal approved and filed Jan. 28, 1933 omitted in printing.

[fol. 8] Citation in usual form showing service on Cabaniss & Johnston omitted in printing.

[fol. 9] Clerk's certificate to foregoing transcript omitted in printing.

[fo]. 10] In Supreme Court of Alabama, Sixth Division, October Term, 1932-1933

No. —

Robert J. McKnett, Appellant,

vs.

St. Louis & San Francisco Railroad Company, a Corporation, Appellee

Appeal from the Circuit Court of the Tenth Judicial Circuit of Alabama.

Assignment of Errors

Now comes the Appellant in the above entitled cause and says that there are manifest errors in the foregoing record of proceedings had and done in the Circuit Court of the Tenth Judicial — of Alabama to the hurt and prejudice of this Appellant, and for Assignment of Errors sets down and assigns the following, separately and severally, to-wit:

1. For that the court erred in overruling the demurrers of the appellant to the plea in abatement of the complaint (R. p. 7).

2. For that the court erred in failing to sustain the appellant's demurrer to the plea in abatement of the complaint (R. p. 7).

(Signed) London, Yancey & Brower, Attorneys for Appellant.

[fols. 11 & 12] Order of submission, April 18, 1933, omitted in printing.

[fol. 13] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1932-33

6 Div. 321

ROBERT MCKNETT

vs.

ST. LOUIS AND SAN FRANCISCO RAILWAY CO.

Appeal from Jefferson Circuit Court

OPINION—June 9, 1933

FOSTER, J.:

This action is alleged to have arisen in Tennessee under the Federal Employers' Liability Act against appellee, a foreign corporation doing business in Alabama, as an interstate carrier. Defendant pleaded in abatement that the cause of action did not arise in Alabama, and that it did not exist either by authority of the common law or the statutes of Tennessee, but arose under the Federal Employers' Liability Act, and that section 5681, Code, did not apply, and the courts of Alabama had no jurisdiction. [fol. 14] By its terms that section only applies to actions which arose in another state either by common law or the statutes of that state. While the Federal Employers' Liability Act is a statute which is effective in Tennessee, as elsewhere in the several states, it was not enacted by the legislature nor by any constitutional convention of that state; nor is its effectiveness there dependent upon any sort of state action or recognition. It is wholly beyond the authority of the state that it is a law.

We do not therefore think that the legislature of Alabama in enacting what is section 5681, Code, intended that its language should have a meaning broader than that ordinarily to be understood by its common or general use. Since the cause of action is not there included, the plea in abatement is available, for prior to the authority of that enactment, it was held that an action on a claim which did not arise in Alabama could not be maintained in its courts against a foreign corporation without its consent.—C. R. R. & B. Co. v. Carr, 76 Ala. 388; Pullman Palace Car Co. v. Harrison, 122 Ala. 149, 25 So. 697; Dozier Lumber Co. v.

Smith, etc., Lumber Co., 145 Ala. 317, 30 So. 714; Southern Railway Co. v. Jordan, 192 Ala. 528, 68 So. 418. Such was the ruling of the circuit court, and it is affirmed.

Affirmed.

All the Justices concur.

[fol. 15] IN SUPREME COURT OF ALABAMA

6 Div. 321

McKNETT

v.

S. L. & S. F. R. R.

OPINION ON REHEARING—Oct. 12, 1933

Per CURIAM:

We are of the opinion the conclusion reached in the original opinion is correct. The authorities cited therein, which need no repetition here, demonstrate that the matter of jurisdiction is dependent upon section 5681, Code 1923, which for convenience is here reproduced:

"Whenever, either by common law or the statute of another state, a cause of action, either upon contract, or in tort, has arisen in such other state against any person or corporation, such cause of action shall be enforcible in the courts of this State, in any county in which jurisdiction of the defendant can be legally obtained in the same manner in which jurisdiction could have been obtained if the cause of action had arisen in this State."

We are concerned first with the proper construction of this statute. It is the general rule that words in common use are to be given their natural, plain, ordinary and commonly understood meaning—Edwards v. Doster-Northington Drug Co., 214 Ala. 640; 59 Corpus Juris 975.

The words of the above noted section, upon which rests the question of jurisdiction in this particular case, are "the statutes of another state," and the case turns upon the true meaning hereof. It has been expressly held, and we think correctly so, that the natural meaning of "statute

of a state," is a statute or law enacted directly by the legislature of the state. Discussing a statute in which these words were used, the court in Cumberland Tel. & Tel. Co. v. City of Memphis, 198 Fed. 955, said: "The natural meaning of 'statute of a state' is a statute or law directly passed by the legislature of the state, and the natural meaning of 'any officer of such state,' is an officer whose authority extends throughout the state, and is not limited to a smaller [fol. 16] district; * * * and that Congress used these phrases with their natural meaning, rather than with the broader and less obvious meaning which trained lawyers might find therein." Giving therefore to the words 'statute of another state" their natural meaning (and we find nothing upon which to base a contrary interpretation) a federal statute is excluded.

The dissenting view appears to rest upon the assumption that such an interpretation would run counter to the intent of Congress and would not harmonize with the cases of Mondou v. N. Y., N. H. and H. R. R. Co., 223 U. S. 1; Murnan v. Wabash Rwy. Co., 246 N. Y. 244, and Walton v. Pryor, 276 Ill. But we think this is a mistaken interpretation of these authorities.

It must first be noted that the question whether the circuit court had jurisdiction is to be determined by the Consitution and laws of this State creating the courts and defining and limiting their jurisdiction. There is no restriction of the Federal Constitution upon the power of a state to determine the limits of the jurisdiction of its courts, except that the state must give to the citizens of other states the same rights that it accords to its own citizens.

So far as concerns this case, therefore, the authority of the state through its legislature to limit its jurisdiction, as above indicated, is well established, for, as said by the United States Supreme Court in St. L. & S. F. R. R. Co. v. Taylor, 210 U. S. 281, "Each state may subject to the restrictions of the Federal Constitution, determine the limits of the jurisdiction of its courts, the character of the controversies which shall be heard in them, and specifically how far it will, having jurisdiction of the parties, entertain in its courts transitory actions where the cause of action has arisen outside its borders." And to like effect was the holding in Chambers v. B. & O. R. R. Co., 207 U. S. [fol. 17] 142, all of which was fully discussed by the Illinois case of Walton v. Pryor, supra, wherein the Mondou

case, supra, is considered, and wherein it is pointed out that Congress had no authority and made no effort to prescribe the jurisdiction of a state court. That was a matter for the state and the state only, and presenting no federal question. And as further illustrating this fact, the Illinois court quotes and comments upon the Mondou case as follows:

"One of the questions considered by the Supreme Court of the United States was this: 'May rights arising under those regulations be enforced as of right in the courts of the states when their jurisdiction as fixed by local laws is adequate to the occasion?' On that question the court said: 'There is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect the modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the act of Congress and susceptible of adjudication according to the prevailing rules of procedure. We say "when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion," because we are advised by the decisions of the supreme court of errors that the superior courts of the state are courts of general jurisdiction, are empowered to take cognizance of actions to recover for personal injuries and for death, and are accustomed to exercise that jurisdiction not only in cases where the right of action arose under the laws of that state, but also in cases where it arose in another state and under its laws and in circumstances in which the laws of Connecticut gave no right of recovery.' The court being advised that the courts of Connecticut had jurisdiction of actions for personal injuries and for death in cases where the right of action arose under the laws of that state, and also in cases where it arose in another state and under the laws of the other state where the laws of Connecticut gave no right of recovery, held that the courts of that state were bound to exercise the same jurisdiction to enforce a liability under the federal act.

[fol. 18] "Section 6 of the federal act, as amended in 1910, contains this provision: 'The jurisdiction of the courts of the United States under this act shall be concurrent with

that of the courts of the several states, and no case arising under this act and brought in any state of competent jurisdiction shall be removed to any court of the United States.' In view of the powers of the federal government and the states and in the light of the uniform decisions relating to the subject, this provision can only mean that when the jurisdiction of the courts of a state as fixed by local laws empowers them to hear and determine a certain class of actions, an action of that class arising under federal law may be enforced as of right in the state court. * * *

"The Supreme Court of the United States has said that there has been no attempt of Congress to enlarge the jurisdiction of the state courts but only to require its exercise consistently with local laws, and the enforcement of liability for damages occasioned by a death outside of the state is not consistent with such laws."

And the Court of Appeals of New York in Murnan v. Wabash Rwy. Co., supra, likewise makes it clear that the jurisdiction of the state courts is a matter for the state to determine, and that Congress had no right and made no attempt to invade such powers of the state. The court there points out that in all tort cases where one non-resident sues another under the laws of another state, the courts of that state exercise a discretion as to whether or not the suit will be entertained. The Appellate Division had held that the Federal Employers' Liability Act, which recognized concurrent jurisdiction in the state court, made it mandatory upon the state court not to refuse to exercise its jurisdiction in any case brought under the Act. But the Court of Appeals repudiated this holding and ruled that the state court would entertain jurisdiction only as it did in any other case and that such action is to be governed solely by the law of the state. Answering the opinion of the Appellate Division the Court of Appeals said:

[fol. 19] "It relied on the case of Mondou v. N. Y., N. H. and H. R. R. Co., (223 U. S. 1). The case is authority for the bare proposition that where the state courts would exercise their jurisdiction except for the fact that the action is brought under the act of Congress, they may not refuse to exercise jurisdiction because the action is brought under the laws of the United States. The court said: 'The existence of the jurisdiction creates an implication of duty

to exercise it * * *. We conclude that rights arising under the act in question may be enforced, as of right, in the courts of the states when their jurisdiction, as prescribed by local laws, is adequate to the occasion.'

"This general language read in connection with what was actually decided means nothing more than that the state courts must make no hostile discrimination against litigants who come within the act in question; that they must treat litigants under the federal acts as other litigants are treated; that they are to act in conformity with their general principles of practice and procedure and are not to deny jurisdiction merely because the right of action arises under the act of Congress.

"The court seems to make this meaning clear. It says in substance that it is advised by decisions of the Supreme Court of Errors that the Superior Court of the state of Connecticut are not only empowered to take cognizance of actions to recover for personal injuries and death but are accustomed to exercise that jurisdiction in cases where the right of action arises under the laws of another state. It says further: 'We deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the Act of Congress and susceptible of adjudication according to the prevailing rules of procedure.'

The courts of New York exercise their discretion in all other cases where a tort action is brought by one non-resident against another under the laws of another state. The practice may be anomalous but it is well established. That Congress has undertaken to regulate the exercise of jurisdiction by our courts by making compulsory what in other similar cases is discretionary, seems an unreasonable conclusion and a resulting invasion of the powers of our tribunals as heretofore exercised. We conclude that a litigant who brings his action under the Federal Employers' Liability Act stands before the court in no different attitude than a litigant who brings his action under the statute of a sister state. He may not be cast out because he is suing

under the act of Congress. He may not enforce his rights merely because he is suing under the act."

[fol. 20] The Mondou case, supra, as stressed by the Illinois and New York cases, made it clear that no invasion of state power over the matter of jurisdiction of its courts was intended, but only that the courts of the state which by local law have jurisdiction of the causes of action, are not to be permitted to discriminate against entertaining an action merely because it is rested under a federal statute. The prohibition of discrimination was against the court, the local laws allowing jurisdiction and the courts accustomed to enforce it. But the Mondou case, supra, emphatically disavowed any congressional intent "to enlarge or regulate the state courts or to control or affect the modes of procedure."

As above noted, the question of jurisdiction of the state courts is a state matter and not a federal question. This State (so far as concerns this particular case) has limited the jurisdiction of its courts by statute, hereinabove quoted, to causes arising under the "statutes of another state," and we think it clear this language excludes a federal statute. This the State had a right to do, and the Mondou case, supra, discloses that Congress had no intention to invade this authority. We interpret the words of our statute, "statutes of another state," as meaning a statute or law directly passed by the legislature of the state. To hold, as indicated, in the dissenting opinion, that anything in the federal act forces a contrary construction, is but to yield the State power to the federal power, when, as shown in the Mondou case, supra, Congress had no intention to invade such power.

Our statute is plain and unambiguous, and we have given to the language its plain ordinary meaning. To accept a contrary construction merely because of the federal act would but amount to a surrender of the State power in the [fol. 21] matter of fixing the limitation of the jurisdiction of its courts. Congress had no such limitation and made no such effort. In the Mondou case, supra, local laws permitted the action, and the declination of the state court to entertain the suit merely because based on the federal statute was held to be an unwarranted discrimination by the court; but that decision in no manner affects the instant case

wherein this Court is engaged in no discrimination but only construing and enforcing its own statutory provisions. No such question was presented in the Mondou case, and the opinion of the Illinois and New York courts in the cases noted above demonstrate that neither the federal act nor the decision in the Mondou case was intended in any manner to question the authority of the state, through its law-making body, to fix the jurisdictional limits of its own judicial tribunals.

We therefore conclude the original opinion is correct, and should be adhered to.

The application for rehearing is overruled.

Anderson, C. J., Gardner, Bouldin, Thomas and Knight, JJ., concur.

Brown and Foster, JJ., dissent.

[fol. 22] IN SUPREME COURT OF ALABAMA

6 Div. 321

McKNETT

v.

S. L. & S. F.

DISSENTING OPINION ON REHEARING

FOSTER, J., (dissenting):

While I wrote the opinion on the original hearing, my judgment, shared in by Justice Brown, then was that the interpretation given section 5681, Code, was not the best, but the majority of the Court did not agree with us and we concurred in the construction given it by them.

Our attention is now called to the holding that one whose claim is under the Federal Employers' Liability Act must be held to stand in no different attitude in respect to his right to maintain suit in a State court than one who brings his action under the statute of a sister state, for "He may not be cast out because he is suing under the Act of Congress," and "He may not enforce his rights merely because he is suing under the Act."—Murnan v. Wabash R. R. Co., 246 N. Y. 244, 158 N. E. 508.

It was also said by the United States Supreme Court in Mendow v. New York, N. H. & H. R. Co., 223 U. S. 1, 56 L. Ed. 327, in respect to the right of a litigant to maintain suit in a State court upon a claim which arose under the Federal Employers' Liability Act: "We conclude that rights arising under the Act in question may be enforced as of right in the courts of the states when their jurisdiction, as prescribed by local laws, is adequate to the occasion," and held further that in state "courts of general jurisdiction empowered to take cognizance of actions to recover for personal injuries and for death, and are accustomed to exercise that jurisdiction, not only in cases where it arose under the laws of that state, but also in cases where it arose in another state, under its laws, and in circumstances in which the laws of Connecticut [the state in which suit was brought, different from that in which the action arose] give no right of recovery, as where the causal negligence was [fol. 23] that of a fellow servant," cannot withhold its jurisdiction of an action which arose in another state under the Federal Employers' Liability Act. This conclusion and result were given effect in Walton v. Pryor, 276 Ill. 563.

I think it would be an unwarranted discrimination to construe our statute so as to open the doors of our State courts to torts committed in another state which exist by virtue of the common law of that state or of statutes enacted by its legislature, and shut the door against those which exist in that state by virtue of an Act of Congress, there effective, unless the language of the law can have no other meaning.

It was said in Claflin v. Houseman, 93 U. S. 136, 137, 23 L. Ed. 833, 838-9, that "The two together, (the laws of the United States and those of the state) form one system, which constitute the law of the land for the state," cited in Mondou v. N. Y., N. H. and H. R. R. Co., supra.

Again it has been held by the same court that an enactment to which the state gives the force of law is a statute of that state though not originating in its legislature.—Williams v. Bruffy, 96 U. S. 176, 183, 24 L. Ed. 716; N. O. Water Works Co. v. La. Sugar Ref. Co., 125 U. S. 18, 31 L. Ed. 607.

For those reasons I cannot accept the theory that section 5681, Code, does not here have effect.

Brown, J., concurs in the foregoing dissent.

[fol. 23a] IN SUPREME COURT OF ALABAMA

Present: All the Justices.

6th Div. 321

ROBERT J. MCKNETT

vs.

ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY

JEFFERSON CIRCUIT COURT

JUDGMENT OF AFFIRMANCE—June 9, 1933

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is also considered that the appellant and Walter Brower and G. H. Greene, sureties on the appeal bond, pay the costs of appeal of this Court and of the Circuit Court.

And it appearing that said parties have waived their right of exemptions under the laws of Alabama, let execution issue accordingly.

[fol. 24] IN SUPREME COURT OF ALABAMA

Present: All the Justices.

[Title omitted]

ORDER OVERRULING APPLICATION FOR REHEARING—Oct. 12, 1933

The application for rehearing heretofore filed in this cause, being duly examined and understood by the Court, it is considered and ordered that said application be and the same is hereby overruled.

[fol. 25] Bond on petition for certiorari for $500.00, approved Nov. 4, 1933, omitted in printing.

[fol. 26] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 27] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 4, 1933

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: In Forma Pauperis. File No. 38,200. Alabama Supreme Court. Term No. 597. Robert J. McKnett, petitioner, vs. St. Louis & San Francisco Railway Company. Petition for a writ of certiorari and exhibit thereto. Filed November 20, 1933. File No. 597 O. T. 1933.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 597

ROBERT J. McKNETT, PETITIONER,

vs.

ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY,
A CORPORATION.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of Robert J. McKnett respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

Here involved is a discrimination against a plaintiff in a cause of action arising under the Federal Employers' Liability Act (45 U. S. C. A., Sections 51-59) in the declination of the State courts below to suffer the prosecution of such a suit where the defendant was a non-resident of Alabama owning and operating a railroad in the State both at the time of the accrual of the cause of action and the suit's commencement, and the cause of action arose in another State, although the jurisdiction of such State courts,

"as prescribed by local laws, is appropriate to the occasion," jurisdiction having been rejected solely because the cause of action arose under an act of the Congress.

In fine, in its construction of a State statute (Section 5681, Code of Alabama of 1923), providing that:

> "Whenever, either by common law or the statutes *of another state,* a cause of action, either upon contract or in tort, has arisen in such state against any person or corporation, such cause of action shall be enforcible in the courts of this state, in any county in which jurisdiction can be legally obtained in the same manner in which jurisdiction could have been obtained if the cause of action had arisen in this state,"

the State court of last resort has concluded that while the quoted statute required a determination of causes of action arising under the common law or statute *of any other State,* no such requirement existed as to suits arising under an act of the Congress, and therefore jurisdiction below was denied.

B.

Reasons Relied on for the Allowance of the Writ.

The State's highest court below has decided a Federal question of substance in a way, probably not in accord with the applicable decisions of this Court, in that though recognizing itself bound to entertain jurisdiction of all causes arising in other States against non-residents (thereby declaring its jurisdiction, as prescribed by local laws to be appropriate in such case) it has declined to extend such jurisdiction to suits under the Federal Employers' Liability Act (45 U. S. C. A. Sections 51-59), creating thereby an artificial discrimination against causes arising under an Act of Congress.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this

Honorable Court, directed to the Supreme Court of Alabama, requiring that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 321, 6th Division, Robert J. McKnett, Appellant, vs. St. Louis & San Francisco Railway Company, a corporation, Appellee, and that the said judgment of the Supreme Court of Alabama be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just, and your petitioner will every pray.

ROBERT J. MCKNETT,
By WALTER BROWER,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 597

ROBERT J. McKNETT, PETITIONER,

vs.

ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY,
A CORPORATION.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinion of the Court Below.

The opinion in the Court below is reported in 149 So. 822, 227 Ala. —. Rendered by the Supreme Court of Alabama on June 9, 1933, it was extended in response to an application for rehearing, overruled on October 12, 1933 (R., p. 17).

The circuit court (where suit was filed) rendered the judgment appealed from without opinion.

II.

Jurisdiction.

1. Rendered on June 9, 1933, and as finally modified in response to application for rehearing, seasonably made,

the date of the judgment to be reviewed is October 12, 1933 (R., p. 8).

2. It is specifically claimed that the court below erred in affirming the judgment of the court, where suit was filed, in the overruling by the latter of demurrers to the respondent's plea in abatement. This ruling of the court of first instance will be found on page 6 of the Record. The opinion of the court below, affirming it, will be found on page 8, *et seq.*, of the Record.

3. The statutory provision under which such jurisdiction is invoked is Section 344 of Title 28, U. S. C. A. (Judicial Code, Section 237, as amended).

4. The cases believed to sustain the jurisdiction are:

Second Employers' Liability cases (*Mondou* v. *N. Y., N. H., & H. R. R. Co.*), 223 U. S. 1, 32 Sup. Ct. Rep. 169, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44.

Douglas v. *N. Y., N. H., & H. R. R. Co.*, 279 U. S. 377, 73 L. Ed. 747, 49 Sup. Ct. Rep. 355.

III.

Statement of the Case.

Robert J. McKnett, your petitioner, filed his suit under the Federal Employers' Liability Act against the Respondent Railroad in the Circuit Court of the 10th Judicial Circuit of Alabama, claiming damages for certain severe physical injuries alleged to have been sustained by him in Memphis, Tennessee, while in the course of the performance and discharge of his duties as a trainman in the employ of the railroad (R., p. 1).

Both at the time McKnett was injured, and when suit was filed, the railroad was alleged to have been doing business in Jefferson County, Alabama (R., p. 3)—the place were the litigation was commenced.

Appearing specially, the railroad plead in abatement that McKnett's suit was not maintainable where commenced, in that the injury arose outside the state, and that it was a foreign corporation.

McKnett's demurrer to the plea in abatement was overruled (R., p. 6). He, thereupon, in consonance with the local practice, because of the adverse ruling of the court, took a non-suit (R., p. 6), appealing to the State Supreme Court (R., p. 6). That court affirmed the judgment of the court below on June 9, 1933 (R., p. 8), all the justices concurring. McKnett seasonably applied for a rehearing (R., p. 9). In an extended opinion (R., 9) it was overruled on October 12, 1933, two of the justices dissenting. Thus, in a final judgment, it was determined by the Alabama Court of last resort that no suit under the Act in question arising in another State could be maintained in Alabama where the defendant was a non-resident, although it did business where suit was commenced. This conclusion was reached despite a local statute (Code 5681) prescribing that whenever "by the common law or statute of another State a cause of action, either upon contract or in tort, has arisen in such other State * * * such cause of action shall be enforcible in the courts of this State * * *," which, in over ten decisions handed down by the court below prior to this suit's commencement, had been construed to overturn an earlier judicial policy of rejecting such jurisdiction, and require its entertainment.

For the first time since that statute's passage has the court below declined to accept this jurisdiction. That declination, as appears from the opinion, was solely because this suit arose not "under the common law or statutes of another *state*," but under an Act of the Congress, it being declared that the statute was therefore inapplicable.

IV.

The Specification of Errors.

1. The trial court erred in overruling McKnett's demurrer to the respondent's plea in abatement (R., p. 6), as did the court below in its approval thereof.

2. The trial court erred in determining that the present action, arising under an Act of the Congress, was not included in the statute opening the courts of Alabama to causes of action arising under the common law or statutes of other states, as did the court below in its approval thereof.

ARGUMENT.

POINT A. Where a particular State's courts are given no discretion to entertain suits against non-residents on foreign causes of action and are otherwise competent, such courts are under a duty to hear and determine such causes arising under the Federal Employers' Liability Act (45 U. S. C. A., Sections 51-59).

At the outset, it is proper to state that no contention has ever been made that the institution and maintenance of the suit was violative of the commerce clause. (*Michigan Central Railroad Company* v. *Mix et al.*, 278 U. S. 492, 73 L. Ed. 470, 49 Sup. Ct. Rep. 207; *Davis* v. *Farmers Co-op Co.*, 260 U. S. 321; *A., T. & S. F. Ry. Co.* v. *Wells et al.*, 265 U. S. 101.)

The respondent owns and operates over a considerable trackage at the place of the institution of the suit.

There is solely presented the construction of a State statute by the court below. We assert that the conclusion reached was erroneous because it was not in accord with the applicable decisions of this Court.

Preliminary to the argument, a brief résumé of the history of the treatment by the courts of Alabama of suits against non-residents on foreign causes of action is necessary.

In 1884, in *Central Railroad & Banking Company* v. *Carr*, 76 Ala. 388, it was determined by the Supreme Court of Alabama that a suit could not there be maintained by a Georgia resident on a cause of action there arising against a Georgia railroad, the latter maintaining trackage, etc., in Alabama. This rule was reapplied in many later cases, found in the foot-note below (1).

In 1907 (Gen. Acts Sp. Sess. 1907, p. 67) the statute later codified as Section 5681, Code 1923, was passed by the State's Legislature. It was construed in *National Council, Junior Order of W. A. M.* v. *Hill*, 208 Ala. 63, 93 So. 812. In that case, a Mrs. Hill, wife of one R. C. Hill, deceased, who, during his lifetime had resided with her in Tennessee, sued on a certificate of life insurance there issued by appellant society, incorporated in Pennsylvania. The society, duly qualified to do business in Alabama, appeared specially, averring its non-residence and the accrual of the cause in Tennessee. Demurrers to the plea were sustained. In affirming the trial court, it was said by the Supreme Court of Alabama:

(NOTE 1.) *Louisville & Nashville Railroad Company* v. *Dooley*, 78 Ala. 524; *Alabama Great Southern Railroad Company* v. *Chumley*, 92 Ala. 317; *Richmond & Danville Railroad Company* v. *Trousdale & Son*, 99 Ala. 394; *Louisville & Nashville Railroad Company* v. *Williams*, 113 Ala. 402; *Pullman Palace Car* v. *Harrison*, 122 Ala. 149, 25 So. 697; *Dozier Lumber Company* v. *Smith, etc., Lumber Company*, 145 Ala. 317, 30 So. 714; *Southern Railway Company* v. *Jordan*, 192 Ala. 528, 68 So. 418.

"In other words, if the defendant, though a foreign corporation, was at the time of the suit doing business in this state, * * * and service was properly had upon the Insurance Commissioner and * * * this being a transitory cause of action, it was suable in this state under the act of 1907, Special Session, p. 67 (*i. e.*, Code Section 5681, and cases cited). Therefore, the rule as declared in Pullman Palace Company *vs.* Harrison, 122 Ala. 149, 25 So. 155, 72 Am. St. Rep. 68, and the Carr case, 76 Ala. 388, 52 Am. Rep. 339, there cited (*i. e.*, in these cases the court held that a foreign corporation was not here amenable to suit on a cause of action arising in a foreign jurisdiction) *has been changed*, and the trial court did not err in sustaining the demurrer to plea two or in declining to quash the service of process." (Italics supplied.)

Settled by the *Hill case, supra*, it has been reaffirmed in at least ten later decisions. (See foot note 2.)

In *Jefferson Island Salt Company* v. *E. J. Longyear Company*, 210 Ala. 352, 98 So. 119, it was declared by the Supreme Court of Alabama:

"Prior to the act of 1907, the courts of this state had no jurisdiction to try causes between foreign corporations when the cause of action arose outside of the

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(NOTE 2.) Cf. *Dawson* v. *Dawson*, 224 Ala. 13, 138 So. 414; *Mobley, Supt. of Banks of Ga.* v. *Smith*, 224 Ala. 45, 138 So. 550; *Dollahite-Levy Co.* v. *Overton*, 223 Ala. 12, 133 So. 903; *Singleton* v. *Hope Eng. Co.*, 223 Ala. 538, 137 So. 441; *Continental Auto Ins. Underwriters* v. *Menuskin*, 222 Ala. 370, 132 So. 883; *Hall et al.* v. *Milligan*, 221 Ala. 233, 128 So. 438; Cf. *Weir* v. *Bro. Ry. Trainmen*, 221 Ala. 494, 129 So. 267; *Jefferson Island Salt Co.* v. *E. J. Longyear Co.*, 210 Ala. 352, 98 So. 119; *National Council, Junior Order, etc.* v. *Hill*, 208 Ala. 63, 93 So. 812; Cf. *Weaver* v. *Ala. Great Southern R. Co.*, 200 Ala. 432, 76 So. 364; *Southern Ry. Co.* v. *Jordan*, 192 Ala. 528, 68 So. 418.

> State. * * * Hence the Legislature * * * enacted the following (setting out the statute).
>
> Why the Legislature desired to burden the courts of this state with settling controversies between outsiders and which arose in other states is difficult to appreciate, but is, of course, a question of legislative policy with which the courts must not be concerned. Said act, however, must be so construed as to make it harmonize with the 'due process' clause of the federal Constitution when such can be done without doing violence to the legislative intent, *and must therefore be held to mean that suits can be maintained in the courts of this state by non-residents and personal judgments obtained upon causes of action arising out of this state, if legal service can be had on the defendant.*" (Italics supplied.)

It would, therefore, certainly appear that whatever had theretofore been the rule, since the passage of the statute it has become the judicial policy (in the adherence to which no discretion is permitted to enter) of Alabama that her courts are open for the hearing and determination of such causes.

In the case at bar, it was sought to effect a departure from that policy because here the cause arose not "under the common law or statute of *any state*" but under a legislative enactment of the Congress.

Any such departure is in contrariety to the decisions of this State. *Mondou* v. *N. Y., N. H. & H. R. R. Co.*, 223 U. S. 1, 32 Sup. Ct. Rep. 169, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44 (*Second Employers' Liability Cases*).

In fine, it has been declared that in Alabama the original jurisdiction of her courts "as prescribed by local laws, is appropriate to the occasion" of hearing foreign controversies against non-residents. This is such a controversy. Excluding it because of its congressional statutory derivation will not be sanctioned.

This is not such a case as *Douglas* v. *N. Y., N. H. & H. R. R. Co.*, 279 U. S. 377, 73 L. Ed., 747; 49 Sup. Ct. Rep. 355. There, as was clearly pointed out, the courts of New York had a discretion. Here there is none. Succinctly stated by Judge Pound of the Court of Appeals of New York, in *Murnan* v. *Wabash Railroad Company*, 246 N. Y. 244, 158 N. E. 508 (1927), the distinction is that:

> "The Appellate Division held that the Federal Employers' Liability Act which conferred, or recognized, concurrent jurisdiction in the state courts, made it mandatory upon the state court not to refuse to exercise its jurisdiction, when it had such jurisdiction, in any case brought under the act. It relied on the case of *Mondou* v. *N. Y., N. H. & H. R. R. Co.*, 223 U. S. 1, 32 St. Ct. 169, 56 L. ed., 327, 38 L. R. A. (N. S.) 44. The case is authority for the bare proposition that, where the state courts would exercise their jurisdiction except for the fact that the action is brought under the act of Congress, they may not refuse to exercise jurisdiction because the action is brought under the laws of the United States. The Court said:
>
> "'The existence of the jurisdiction creates an implication of duty to exercise it. * * * We conclude that rights arising under the act in question may be enforced, as of right, in the courts of the states when their jurisdiction, as prescribed by local laws, is adequate to the occasion.' (Page 58, 32 S. Ct. 178.)
>
> "This general language read in connection with what was actually decided means nothing more than that the state courts must make no hostile discrimination against litigants who come within the act in question; that they must treat litigants under the federal act as other litigants are treated; *that they are to act in conformity with their general principles of practice and procedure and are not to deny jurisdiction merely because the right of action arises under the act of Congress.*" (Italics supplied.)

Other pertinent decisions will be found below (footnote 3).

Indeed in its construction of the statute the court below erred because while passed by the Congress, the Federal Employers' Liability Act was a statute of Tennessee (the place of the injury), (*Claflin* v. *Hausman*, 93 U. S. 136, 23 L. ed., 833), for as pointed out by the dissenting opinion in the court below" * * * an enactment to which the State gives the force of law is a statute of that State though not originating in its legislature (citing) *Williams* v. *Bruffy*, 96 U. S. 176, 183, 24 L. ed., 716; *N. O. Water Works Co.* v. *La. Sugar Ref. Co.*, 125 U. S. 18, 3 L. ed., 607."

The legislative sagacity begetting the statute (Section 5681) is not here involved. (See 44 H. L. R. 41; 43 H. L. R. 1217, dissenting opinion of Stone, J., in *Boright's case, supra*, and opinion of Mr. Justice Brandeis in *Davis* v. *Farmers Co-op. etc., Co., supra*). Here a duty was imposed. However reluctant, immutable was to be the obedience to it (the very decisions render under it so attested). No discretion was yielded, now to follow and now reject its mandate (as in New York). An attempt to create one by a judicial evolvement of an artificial discrimination against causes under Federal legislative pronouncements (when all others are welcomed) will hardly be sanctioned.

(NOTE 3.) *Boright* v. *Chicago R. I. & P. R. Co.*, 230 N. W. (Minn. 1930) 457; *Taylor* v. *Southern R. Co.*, 259 Ill. App. 271, (reversed other grounds 350 Ill. 139, 182 N. E. 805); *Walton* v. *Pryor*, 276 Ill. 563; *Bright* v. *Wheelock et al. as Receivers of C. & A. R. R. Co.*, 20 S. W. (2) 684, (Md. Sup. Ct.) 66 A. L. R. 263.

Conclusion.

It is, therefore, respectfully submitted that this cause is one calling for the exercise by this Court of its supervisory powers, and that to such an end a writ of certiorari should be granted, and this Court should review the decision of the Supreme Court of Alabama and finally reverse it.

WALTER BROWER,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 597

ROBERT J. MCKNETT, Petitioner

vs.

ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY

Respondent.

MOTION TO DISMISS WRIT OF CERTIORARI

Now comes the respondent and moves the Court to dismiss the writ of certiorari heretofore granted for want of jurisdiction, in this:

1. The decision of the Supreme Court of Alabama, sought to be reviewed, was concerned solely with the construction of a statute of the State of Alabama.

2. No objection was raised by petitioner in the trial court that said statute was in conflict with the Constitution of the United States.

3. The decision of the Supreme Court of Alabama did not determine the question of the validity, vel non, of said statute with reference to the Constitution of the United States.

4. Petitioner does not seek a determination of the constitutionality of the statute, but merely a review of its construction by the Alabama Court, to the end that a different construction be given it by this Court.

Forney Johnston,

Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 597

ROBERT J. MCKNETT, Petitioner

vs.

ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY
Respondent

BRIEF IN SUPPORT OF MOTION TO DISMISS

As is shown by the record, this petition for a writ of certiorari was granted by the Court without service of a copy of the petition, or other notice of its filing, upon counsel for respondent. Had counsel for respondent had notice of the filing of the petition, the objection to the jurisdiction of the Court could have been pointed out in a brief in opposition to the petition.

It is apparent that no Federal question is raised in this case.

The decision in this case, both in the trial court and in the Supreme Court of Alabama, turned upon the proper construction of a statute of Alabama, passed in 1907, and now codified as Section 5681 of the 1923 Code.

Prior to the passage of this act, it was the settled rule in Alabama that a foreign corporation could not be sued in Alabama, except on causes of action originating in the state, or on contracts entered into with reference to a subject matter within the state. The basis of the rule was that without legislative enactment, a foreign corporation could not be sued outside of the state of its domicil, because service of process must be had upon its principal officer within

the jurisdiction of the state of domicil, and service outside of such jurisdiction was not binding. Statutes enacted in Alabama provided for service of process upon agents of foreign corporations doing business in the state, but such statutes were construed as applying only to causes of action originating in the state, or on contracts entered into with reference to a subject matter within the state.

Pullman Palace Car Co. v. Harrison, 122 Ala. 149, 25 So. 697,

where it was said:

"Without legislative enactment, a foreign corporation could not be sued outside of the State of its domicil, for the reason there were no means provided by which service could be had upon it. By the common law, to maintain a personal action against a corporation there must have been service of process upon the principal officer within the jurisdiction of the sovereignty creating it. The officer upon whom, in the sovereignty of its creation, service could be legally had, binding the corporation, it may be could be found in another jurisdiction, but he was not regarded as carrying with him his official functions, and service upon him there would not bind the corporation.—St. Clair v. Cox, 106 U. S. 354; Sullivan v. Sullivan Timber Co., 103 Ala. 371. To meet and obviate this inconvenience and oftentimes injustice, the Legislature of this State has enacted statutes by which process may be served upon the agents of foreign corporations doing business in this State. We do not deem it important; to a correct decision of this case, to review these statues. They do not materially differ, for the purpose here involved, from those in existence when the case of Central Railroad & Banking Co. v. Carr, 76 Ala. 388, was decided by this court. In that case, the learned judge reviewed them at length and, after an exhaustive

> examination of cases decided by other courts, held, that a foreign corporation, though doing business in this State through its agents located here, could not be held liable by our courts for a tort committed by it in another State. We quote his conclusion in that opinion, as he there so aptly and tersely states the doctrine by saying: 'We cannot think that it was the intention of the legislature, in any of the statutes we have been considering, to allow foreign corporations to be sued in this State, except on causes of action originating in this State, or on contracts entered into in reference to a subject matter within this State. To hold otherwise would allow foreign corporations which transact business in Alabama to be drawn into our courts, for the adjudication of every tort and wrong they may be charged with committing, even in the State which gave them being."

Certainly no one could contend that this rule, applying to all foreign causes of action against all foreign corporations, constituted an unwarranted discrimination against claimants under a Federal act. (Douglas v. N. Y., N. H. & H. Co., 279 U. S. 377, 73 L. Ed. 747.)

This remained the rule in Alabama until the passage, in 1907, of the act in question (now Sec. 5681, Code 1923) which in substance provided that whenever a cause of action had arisen in another state under either the common law or statute of such state, such cause of action should be enforceable in Alabama. Following the passage of this act, the Supreme Court of Alabama held in several cases (cited in petitioner's supporting brief, p. 9 et seq.) that the act changed the former prevailing rule in that it authorized suits against foreign corporations upon causes of action arising outside of the state. But all of those cases were cases where the cause of action arose under the common law or the statutes of a sister state, and no case had

arisen requiring the Court to construe the statute with reference to whether it included causes of action arising under Acts of Congress.

In the present case the petitioner sought to enforce, in Alabama, a cause of action arising in Tennessee under an Act of Congress against respondent, a foreign corporation. Respondent pleaded in abatement that it was a foreign corporation, that the cause of action arose, not in Alabama, but in Tennessee, and that it did not arise under the common law or statutes of Tennessee, but under an Act of Congress. Thus respondent relied upon the common law rule in Alabama, (Pullman Palace Car Co. v. Harrison, supra); contending that the 1907 Act did not apply, because this action did not arise under the common law or statute of a sister state.

Petitioner demurred to the plea in abatement but no ground of the demurrer takes the point that the 1907 Act is violative of any of petitioner's constitutional rights or privileges, notwithstanding it has long been the statutory law of Alabama that "No demurrer in pleading can be allowed but to matter of substance, which the party demurring specifies; and no objection can be taken or allowed which is not distinctly stated in the demurrer," (Code, 1923, Sec. 9479), under which statutory rule it is necessary for the demurrer to point out the distinct constitutional objection. (Gordon v. Medders, 148 So. 135 (Ala. Sup.). It is clear that no question of the Constitutional validity of the 1907 Act was raised on the record.

Nor did the Supreme Court of Alabama in its opinion, determine the constitutional validity of the 1907 Act. The original opinion deals solely with the construction of the act, and the Court concludes, in substance, that the word "state" as used in the act means one of the American Com-

monwealth of states, does not include the United States, and consequently this case is not included in the 1907 Act, and the common law rule, prohibiting its maintenance in Alabama, prevails.

The opinion of the majority of the Court, on rehearing, likewise deals solely with the construction of the 1907 Act, and the construction placed on the act in the original opinion is adhered to. And the minority opinion, on rehearing, is concerned solely with construction. Apparently the dissenting Justices were of opinion that the act should be construed to include causes of action arising outside of Alabama under Acts of Congress against foreign corporations because "it would be unwarranted discrimination, ... unless the language of the law can have no other meaning." (R. p. 16). And the minority opinion concluding as follows, "For these reasons I cannot accept the theory that Section 5681, Code, does not here have effect," conclusively demonstrates that the minority opinion was concerned solely with the construction of the act.

Likewise the majority opinion on rehearing was concerned solely with construction. The opinion first reaffirms the construction given the act in the original opinion, saying: "Giving therefore to the words 'statute of another state' their natural meaning (and we find nothing upon which to base a contrary interpretation) a federal statute is excluded." The opinion then states the minority view, that the Federal Employers Liability Act and this Court's decision in the Second Employers Liability Act Cases (Mondou v. N. Y., N. H. & H. R. R. Co., 223 U. S. 1) should force the Alabama Court to so construe the 1907 Act as to include Acts of Congress. The Court then points out that the jurisdiction of the state courts is a state and not a federal matter, and discusses the Mondou and other cases

in demonstrating that there is nothing in those cases, or in the Federal Act, to force the Alabama Court to construe its own statute so as to include Acts of Congress. The opinion makes it clear that it is dealing only with the construction of the 1907 Act. It states (R, pp. 14-15):

> "We interpret the words of our statute, 'statutes of another state,' as meaning a statute or law directly passed by the legislature of the state. To hold, as indicated in the dissenting opinion, that anything in the federal act forces a contrary construction, is but to yield the State power to the federal power, when, as shown in the Mondou case, supra, Congress had no intention to invade such power.
>
> *"Our statute is plain and unambiguous, and we have given to the language its plain ordinary meaning. To accept a contrary construction merely because of the federal act would but amount to a surrender of the State power in the* (fol. 21) *matter of fixing the limitation of the jurisdiction of its courts. Congress had no such limitation and made no such effort. In the Mondou case, supra, local laws permitted the action, and the declination of the state court to entertain the suit merely because based on the federal statute was held to be an unwarranted discrimination by the Court; but that decision in no manner affects the instant case wherein this Court is engaged in no discrimination but only construing and enforcing its own statutory provisions."* (Italics supplied.)

Of course no federal question is raised by a state court's construction of its own statute. Such construction is controlling upon this Court, even though it may not agree with the construction given by the state court, and cannot be reviewed or revised on certiorari. (Quong Ham Wah Co. v. Industrial Accident Commission, 255 U. S. 445, 65 L. ed. 723, Grand Gulf R. Co. v. Marshall, 12 How. 165,

13 L. ed. 938, Des Moines National Bank v. Fairweather, 263 U. S. 103, 68 L. ed. 191, Supreme Lodge Knights of Pythias v. Meyer, 265 U. S. 30, 68 L. ed. 885, American Railway Express Co. v. Royster Guano Co., 273 U. S. 274, 71 L. ed. 642.)

Since the case here sought to be reviewed dealt solely with the proper construction of a state statute, and since such construction is solely a matter of state concern, it is submitted that no federal question is presented, and this Court has no jurisdiction.

Indeed, petitioner, both in his petition and in his brief, seeks to have this Court review the state court's construction of the statute, and not the question of its constitutionality. The specific relief sought is for this Court to interpret, construe, the 1907 Act as including suits under Acts of Congress. The reason petitioner is seeking review by construction, rather than on the constitutionality of the 1907 Act, is apparent, because in the event the 1907 Act is declared unconstitutional, then the common law rule will still prevail (Pullman Palace Car Co. v. Harrison, supra) and neither petitioner nor any other claimant having a cause of action arising outside of Alabama against a foreign corporation, whether under the laws of a state, or under an act of Congress, can enforce such action in Alabama. In short, whether the act is constitutional or otherwise, petitioner's case is not bettered, for in the absence of the act, he could not enforce this cause of action in Alabama (since it arose outside of Alabama against a foreign corporation), nor can he enforce it under the act, (since the act includes only causes of action arising under the common law or statute of a sister state). So petitioner can only rely upon the insistence that the Alabama Court erred in construing the act as not including causes of action arising outside of Ala-

bama under Acts of Congress under foreign corporations, —obviously a state matter with which this Court is not concerned.

That petitioner seeks to review the construction of the act is made clear by his statement of the question under the heading "Summary Statement of the Matter Involved" on page 2 of the petition, where it is stated:

"In fine, in its construction of a State statute (Section 5681, Code of Alabama of 1923), providing that:

> 'Whenever, either by common law or the statutes of another state, a cause of action, either upon contract or in tort, has arisen in such state against any person or corporation, such cause of action shall be enforcible in the courts of this state, in any county in which jurisdiction can be legally obtained in the same manner in which jurisdiction could have been obtained if the cause of action had arisen in this state,'

the State court of last resort has concluded that while the quoted statute required a determination of causes of action arising under the common law or statute of any other State, no such requirement existed as to suits arising under an act of the Congress, and therefore jurisdiction below was denied."

Likewise the "Specification of Errors" on page 8 of petitioner's supporting brief fail to raise a federal question, since the first specification is based on the trial court's action in overruling demurrer to the plea in abatement and no ground of demurrer raised any constitutional question, and the remaining specification is, in substance, that the trial court erred in construing the 1907 act as not including acts of Congress.

If there were any doubt that petitioner is merely seeking a construction by this Court of an Alabama statute con-

trary to the construction placed on it by the Alabama Court, it is removed by petitioner's statement of the question on page 8 of his supporting brief as follows:

> "There is solely presented the construction of a State statute by the Court below. We assert that the conclusion reached was erroneous because it was not in accord with the applicable decisions of this Court."

We fully agree that the sole question presented is the construction of a State statute by the Court below. We do not agree that the construction was erroneous, but whether erroneous or correct presents no federal question. Certainly no one has ever supposed that the decisions of this Court can force the Alabama Court to adopt a different construction of its own statute, or give this Court jurisdiction to declare a different construction, as sought by petitioner. The statute as construed is either valid or unconstitutional, but this question is not raised by petitioner, and, as pointed out, cannot be raised by petitioner. Petitioner does not seek to have this Court declare the statute unconstitutional. He seeks solely to have the Court hold that the Alabama Court erred in construing the statute, and to have this Court give a different construction to the statute. Certainly this Court accepts the construction of the statute given it by the Alabama Court, and has no jurisdiction to give the statute a different construction.

Since the question of the constitutionality of the 1907 Act is not raised or urged by petitioner, no occasion arises for a discussion of same. But we take the opportunity of pointing out that a fundamental error pervades petitioner's entire contention, which error is the assumption that the jurisdiction of the Alabama courts "as prescribed by local laws, is appropriate to the occasion," (Petition, pp. 1-2).

And elsewhere (supporting brief, p. 11) petitioner assumes that it is the judicial policy of Alabama to entertain all actions arising outside the state against foreign corporations. But we have pointed out that such is not the case. Prior to the 1907 act, it was the judicial policy of Alabama to decline to entertain foreign causes of action against foreign corporations. That judicial policy was changed by the 1907 act as to those cases governed by the act, namely, foreign causes of action arising under the common law or statute of a sister state. As to other foreign causes of action the judicial policy remained unchanged. Therefore the jurisdiction of Alabama courts, as prescribed by local laws, was not appropriate to the occasion of enforcing the present cause of action. Petitioner argues in circles when he first assumes that the jurisdiction of the Alabama court is appropriate to enforcing all foreign causes of action against foreign corporations, no matter under what law they arose, and then urging that the Alabama court erred in construing the very statute that extended jurisdiction over some foreign causes of action against foreign corporations, which error, (so petitioner argues) was in failing to hold that the statute extended the jurisdiction to all foreign causes of action against foreign corporations, no matter under what law they arose.

It may be mentioned, in passing, that the statute does not deny jurisdiction in this action because the action arose under an Act of Congress, but because the jurisdiction of the Alabama Court does not extend to such a foreign cause of action against a foreign corporation. If the action had arisen in Alabama it would have been enforced. Or if the action, though arising in Tennessee under the Federal Act, had been against a domestic corporation, or an individual operating the railroad, it would have been enforced in Alabama, for the rule in Pullman Palace Car Co. v. Harrison

(supra) is applicable only to foreign corporations. Lee v. Baird, 139 Ala. 526.

In any event, it is clear that no federal question is here presented. The Alabama court did not decline jurisdiction because the action arose under an Act of Congress, but merely construed its own statute. The constitutionality of the statute is not raised on the record, and was not determined by the Court below in its opinion. Petitioner does not seek to have the Court declare the statute unconstitutional. He simply seeks to have this Court review the construction given the statute, to the end that this Court shall give a different construction to the statute. But the construction of the statute is a matter of state concern, and this Court will not review such construction, or place a different construction on the statute. No federal question is raised, and this Court has no jurisdiction.

It is respectfully submitted that the certiorari should be dismissed.

Forney Johnston,

Counsel for Respondent.

FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 597

ROBERT J. McKNETT, Petitioner,

vs.

ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY,

Respondent.

PETITION FOR REHEARING

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 597

ROBERT J. McKNETT, Petitioner,

vs.

ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY,

Respondent.

PETITION FOR REHEARING

Now comes the above-named respondent, St. Louis & San Francisco Railway Company, a Corporation, and presents this, its petition for a rehearing of the above-entitled cause, and in support thereof shows:

1. The opinion states that "The plaintiff, McKnett, is a resident of Tennessee." The record does not bear out this statement. From aught appearing from the record McKnett is not a resident of Tennessee, and is not even a citizen of the United States. If the opinion attempts in part to base McKnett's right to sue in the Alabama Courts upon the privileges and

immunities clause (Art. IV, Sec. 2), it is not supported by the record.

2. The opinion admits that "prior to the Act of 1907, it had been consistently held . . . . that no Alabama court had jurisdiction of any suit against a foreign corporation unless the cause of action had arisen within the State," and further admits that "despite the 1907 Act, lack of jurisdiction still existed in respect to causes of action arising in another state under the federal law; . . . ". Notwithstanding this admission that by Alabama law the Alabama court did not have jurisdiction of a cause of action arising in Tennessee under Federal law against a foreign corporation either before or after the 1907 Act, the Court erroneously concludes that "the ordinary jurisdiction of the Alabama circuit court is appropriate to enforce the right against this defendant (a foreign corporation, we add) conferred upon the plaintiff by the Federal Employers' Liability Act," (and arising in Tennessee). This conclusion is drawn from the Court's statement that the Alabama circuit court is a court of general jurisdiction, would have had jurisdiction if the accident had occurred in Alabama, or, although the accident occurred in Tennessee, if defendant had been a domestic corporation, or, although defendant was a foreign corporation, if the injury had been suffered in intrastate commerce. But to conclude from these facts that the Alabama court had jurisdiction of this cause of action is a clear **non sequitur** and is inescapably opposed to the Court's earlier admission that prior to the 1907 Act the Alabama court did not have jurisdiction, and that jurisdiction over this particular cause of action was not

conferred by the 1907 Act. The Alabama circuit courts were courts of general jurisdiction prior to the 1907 Act, but they did not, by reason of such fact, have jurisdiction over a cause of action arising in Tennessee against a foreign corporation. Jurisdiction over this cause of action, arising in Tennessee against a foreign corporation, was not conferred by the 1907 Act, and since, as the opinon says, "Congress has not attempted to compel states to provide courts for the enforcement of the Federal Employers' Liability Act," it is necessarily true that the Alabama court did not have jurisdiction of this cause of action, and Congress has not attempted to compel it to take jurisdiction.

3. The judgment is reversed because, it is said, the Alabama court is discriminating against a claimant under a federal act. But the discrimination results, not from the Alabama court's decision, but from the 1907 Act, for the Act conferred jurisdiction over causes of action arising in other states under the laws of such states against foreign corporations, and did not confer jurisdiction when the cause arose under Federal law. Since the Court concludes that the discrimination is unwarranted, and since the 1907 Act, and it alone, created the discrimination, it follows that the Act is unconstitutional. As the Alabama court does not have jurisdiction either under the Act or in the absence of the Act, we respectfully submit that the judgment should be affirmed. If the Court prefers to reverse the case in order to permit the Alabama court the opportunity to again construe the 1907 Act in the light of the present opinion, we respectfully request the Court to state that the Act, as construed, is discriminatory and unconstitutional,

rather than to do, by this opinion, that which Congress has not attempted to do, namely, compel the Alabama court to take jurisdiction of this action where jurisdiction, under Alabama law, does not exist. For the result of present opinion is to treat the 1907 Act as constitutional, basing the discrimination on the Alabama court's decision rather than on the Act, and compelling the Alabama court to take jurisdiction of this action, although jurisdiction of the Alabama court did not exist prior to the 1907 Act, and was not conferred by the Act.

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that the judgment of the Supreme Court of Alabama be, upon further consideration, affirmed.

LUCIEN D. GARDNER, JR.,
Counsel for Respondent.

I, the undersigned, counsel for the above named respondent, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

LUCIEN D. GARDNER, JR.,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 597.—October Term, 1933.

Robert J. McKnett, Petitioner, vs. St. Louis & San Francisco Ry. Co. } On Certiorari to the Supreme Court of Alabama.

[April 30, 1934.]

Mr. Justice Brandeis delivered the opinion of the Court.

This action was brought under the Federal Employers' Liability Act, in the Circuit Court of Jefferson County, Alabama, to recover damages for an injury suffered in Tennessee. The plaintiff, McKnett, is a resident of Tennessee. The defendant, St. Louis & San Francisco Railway Company, is a foreign corporation doing business in Alabama. It pleaded in abatement that the court lacked jurisdiction, since the cause of action had arisen wholly in Tennessee and did not arise by the common law or statute of that State. The plea rested upon the limiting words of the Act of 1907, now embodied in Section 5681, Code of 1923, which declares:

"Whenever, either by common law or the statutes of another state, a cause of action, either upon contract or in tort, has arisen in such other state against any person or corporation, such cause of action shall be enforcible in the courts of this state, in any county in which jurisdiction of the defendant can be legally obtained in the same manner in which jurisdiction could have been obtained if the cause of action had arisen in this state."

A demurrer to the plea was overruled; and the judgment entered thereon for the defendant was affirmed by the highest court of the State. — Ala. —. This Court granted certiorari, 290 U. S. —.

The courts of Alabama have, at all times, taken jurisdiction of suits between natural persons on transitory causes of action arising in another state, even if both of the parties were non-residents of Alabama.[1] But prior to the Act of 1907, it had been consistently held, under the rule established by *Central Railroad & Banking Company* v. *Carr*, 76 Ala. 388, that no Alabama court had jurisdiction of any suit against a foreign corporation unless

[1] Steen v. Swadley, 126 Ala. 616, 621. Lee v. Baird, 139 Ala. 526. Compare Smith v. Gibson, 83 Ala. 284.

the cause of action had arisen within the State.[2] In the case at bar, the court held that, despite the 1907 Act, lack of jurisdiction still existed in respect to causes of action arising in another state under the federal law; because, since the statute was in plain terms limited to suits arising under the law of the other state, it could not be extended by construction to include causes of action arising in such other state under a federal law.

The plaintiff contends that by refusing to entertain jurisdiction, the state court has denied him a right expressly conferred by Congress and guaranteed by the Federal Constitution. The defendant insists that the statute as construed is consistent with the Federal Constitution; since a state may determine the limits of the jurisdiction of its courts, the character of the controversies which shall be heard in them; *Anglo-American Provision Company*, v. *Davis Provision Co., No. 1*, 191 U. S. 373; *Chambers* v. *Baltimore & Ohio R. R. Co.*, 207 U. S. 142, 148-9; and the extent to which its courts shall become a forum for the trial of transitory causes of action arising in other states. *Missouri Pacific R. R. Co.* v. *Clarendon Boat Oar Co.*, 257 U. S. 533; *Douglas* v. *New York, New Haven & Hartford R. R. Co.*, 279 U. S. 377.

Alabama has granted to its circuit courts general jurisdiction of the class of actions to which that here brought belongs, in cases between litigants situated like those in the case at bar.[3] The court would have had jurisdiction of the cause between these parties if the accident had occurred in Alabama. It would have had jurisdiction although the accident occurred in Tennessee, if the defendant had been a domestic corporation. It would have had jurisdiction, although the defendant was a foreign corporation, the plaintiff a nonresident, and the accident occurred in Tennessee, if

[2]The conclusion seems to have been reached largely as a matter of statutory construction. Pullman Palace Car Co. *v.* Harrison, 122 Ala. 149, 153-155; Steen *v.* Swadley, 126 Ala. 616, 622; compare Lee *v.* Baird, 139 Ala. 526, 529. Apparently the rule was applied whether the plaintiff was a resident or a non-resident. See Louisville & Nashville R. R. Co. *v.* Dooley, 78 Ala. 524; compare Iron Age Publishing Co. *v.* Western Union Telegraph Co., 83 Ala. 498, 505-6.

[3]Compare Western Union Telegraph Co. *v.* Pleasants, 46 Ala. 641; Equitable Life Assurance Society *v.* Vogel's Executrix, 76 Ala. 441; Southern Ry. Co. *v.* Jordan, 192 Ala. 528, 529; National Council *v.* Hill, 208 Ala. 63; Jefferson Island Salt Co. *v.* E. J. Longyear Co., 210 Ala. 352, 355.

the suit had been brought for an injury suffered while engaged in intrastate commerce. Thus, the ordinary jurisdiction of the Alabama circuit court is appropriate to enforce the right against this defendant conferred upon the plaintiff by the Federal Employers' Liability Act. And its jurisdiction was invoked according to the rules of procedure prevailing in that court.

The power of a State to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them is, of course, subject to the restrictions imposed by the Federal Constitution. The privileges and immunities clause requires a state to accord to citizens of other states substantially the same right of access to its courts as it accords to its own citizens. *Corfield* v. *Coryell*, 4 Wash. C. C. 371, 381. *Compare Canadian Northern Ry. Co.* v. *Eggen*, 252 U. S. 553. The full faith and credit clause requires a state court to take jurisdiction of an action to enforce a judgment recovered in another state, although it might have refused to entertain a suit on the original cause of action as obnoxious to its public policy. *Fauntleroy* v. *Lum*, 210 U. S. 230; *Kenney* v. *Supreme Lodge*, 252 U. S. 411, 415; *Loughran* v. *Loughran*, No. 565, decided this day. By *Mondou* v. *New York, New Haven & Hartford R. R.*, 223 U. S. 1, an action in a Connecticut court against a domestic corporation, it was settled that a state court whose ordinary jurisdiction as prescribed by local laws is appropriate for the occasion, may not refuse to entertain suits under the Federal Employers' Liability Act.

While Congress has not attempted to compel states to provide courts for the enforcement of the Federal Employers' Liability Act, *Douglas* v. *New York, New Haven & Hartford R. R. Co.*, 279 U. S. 377, 387, the Federal Constitution prohibits state courts of general jurisdiction from refusing to do so solely because the suit is brought under a federal law. The denial of jurisdiction by the Alabama court is based solely upon the source of law sought to be enforced. The plaintiff is cast out because he is suing to enforce a federal act. A state may not discriminate against rights arising under federal laws.

Reversed.